(4)

Supreme Court, U.S.
FILED
MAY 19 1987
CLERK

No. 86-863

In the Supreme Court of the United States

OCTOBER TERM, 1986

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

KENNETH KIZER, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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Petition for writ of certiorari filed November 26, 1986
Certiorari granted February 23, 1987

7 PP
foldout

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 85-7123

STANLEY CUBANSKI, DIRECTOR, DEPARTMENT OF HEALTH SERVICES, STATE OF CALIFORNIA, PETITIONER,

AND

DONALD A. BARRIER AND ALAN & LOLA BIERMAN, ET AL., INTERVENORS-PETITIONERS,

v.

MARGERET HECKLER, SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNITED STATES OF AMERICA, RESPONDENT

RELEVANT DOCKET ENTRIES

DATE	FILINGS-PROCEEDINGS
1985	
MAR. 6	FILED ORIGINAL AND 7 COPIES OF A PETITION FOR REVIEW. cmk $65
MAR. 6	DOCKETED CAUSE & ENTERED APPEARANCES OF COUNSEL. cmk
MAR. 6	NOTIFIED RESPONDENT OF FILING. cmk
MAR. 6	SENT PETITIONER CIVIL APPEALS DOCKETING STATEMENT. cmk
Mar. 25	Filed the motion of Donald A. Barrier, Alan & Lola Bierman, James Jones and Ronald Kwiek, for leave to intervene on behalf of petitioner. 3/20 CIVATT sz
Apr. 1	Filed order (SNEED) The motion by Donald A. Barrier, Alan and Lola Bierman, James Jones, and Ronald Kwiek to intervene in this petition for review is granted. *4/1* dl-

DATE	FILINGS-PROCEEDINGS
Apr. 1	Filed resp's motion for one-day ext. of time to file opposition to motion to intervene. 4/1 (CIVATT) eal
Apr. 1	Recv'd resp's opposition to motion to intervene. 4/1 CIVATT (motion pending) eal
Apr. 8	Recv'd as of Apr. 5, resp's motion for reconsideration of order granting intervention. 4/5 (CIVATT) eal
Apr. 9	Filed intervenors-petrs' motion for stay with appendices. 4/9 (CIVATT) eal
Apr. 9	Recv'd two ltrs from Evelyn R. Frank, dated 4/9 re: motion for stay. 4/9 (CIVATT) eal
Apr. 15	FILED CERT. LIST IN LIEU OF THE RECORD. 4/15 (Orig. & 2 copies) **** ***
Apr. 17	Filed resp's opposition to intervenors' motion for stay. 4/16 (CIVATT) eal
Apr. 17	Filed petr's (State of CA) memorandum of points and authorities in response to intervenor's motion for stay. 4/17 (CIVATT) eal
Apr. 18	Filed intervenor's reply memorandum in support of stay. 4/18 (CIVATT) eal
APR. 19	Filed Order (WRIGHT & HUG) The Secretary's motion for an extension of time to file her opposition to the motion to intervene is granted. The Secretary's opposition is construed as a motion for reconsideration of this court's April 1, 1985 order granting the motion to intervene. Construed as such, the Secretary's motion is denied. The intervenors were permitted to intervene in the agency proceedings and actively participated in those proceedings. There were adequate grounds for our previous order granting the motion to intervene. (4/19) cmk
Apr. 24	Rec'd Petitioner's "CADS". 4/23 (Confatt) dl-

DATE	FILINGS-PROCEEDINGS
APR. 29	Filed Order (WRIGHT, HUG & HALL) Intervenor's motion for stay is denied. Briefing and calendaring of this appeal shall be expedited. The clerk shall calendar this appeal for argument on the first available calendar. Petitioner and intervenors shall file their opening briefs within 14 days of entry of this order. Respondent shall file its answering brief within 14 days of the filing of petitioner's brief. Petitioner and intervenors may file reply briefs within 7 days of the filing of respondent's brief. This schedule shall not be modified except under extraordinary circumstances. Judge HUG would grant the stay. (4/29) cmk
	RELEASED FROM PREBRIEFING CONFERENCE PROGR (PER NPV)
May 2	Filed intervenors-petrs' motion for extension of time. 5/2 (CIVATT) eal
May 10	Filed Order (SNEED) The motion of intervenor-petitioners of May 2, 1985, for an extension of time to June 3, 1985, in which to file the opening brief is Denied. The Opening Brief shall be filed no later than May 20, 1985. 5/10 sz
May 16	Filed Orig. & 15 copies of Petitioners Opening Brief. (14 pgs) & 5 copies on 5/16 (No stmt. or related cases-counsel notified to forward) dl
May 20	Received Orig & 3 copies of intervenor-petitioner's Opening brief, (30 pgs). 5/20 (counsel ntfd to send more copies). sz

DATE	FILINGS-PROCEEDINGS
May 20	FILED AS OF APR. 15, 1985, CERT. TRANSC. OF THE ADMIN. RECORD ON APPEAL IN TWO VOLUMES: VOLS. I & II, PLEADINGS. (CERT. COPIES ONLY) eal
May 28	Rec'd as of May 23, Petitioner-Intervenor's additional copies of the Opening Brief and 5 copies of the excerpt of record. 5/20 dl-
May 28	Filed as of May 20, Org. & 15 copies of Intervenor-Petitioner's Opening Brief. (30 pgs) 5/20 dl
May 29	Rec'd Petitioner's statement of related cases. dl-
Jun. 04	Filed as of Jun. 03, 1985, Orig. & 15 copies of Respondent's Brief. (31 Pgs.) 6/3 dl-
Jun. 10	Filed Orig. & 15 copies of Intervenor's Reply Brief. (17 pgs) 6/10 & 5 copies of Intervenor's Supplemental Excerpts of Record. dl-
Jun. 10	Rec'd Orig. & 15 Copies of Petitioner's Reply Brief. (7 pgs) 6/11 dl- (Late—counsel notified—motion to follow)
June 14	Filed petr's motion to enlarge time to file reply brief. 6/14 CIVATT eal (LATE)
JUNE 25	Filed Order (SNEED) Petitioner's motion of June 14, 1985 for leave to file the reply brief late is granted. The reply brief already received will be filed. (6/25) cmk
JUNE 25	Filed Original and 15 copies of Petitioner's Reply Brief. (7 pgs) 6/11 cmk
June 25	Recv'd as of June 24, ltr from E. Frank, dated 6/21 re: additional citations. 6/21 eal *****
July 1	Recv'd ltr from resp, dated 6/28 re: additional citations. 6/28 (PANEL) eal
July 9	Recv'd ltr from E. Frank, counsel for intervenors, dated 7/1 re: add'l citation. 7/1 (PANEL) eal

DATE	FILINGS-PROCEEDINGS	
AUG 14	ARGUED AND SUBMITTED BEFORE: DUNIWAY, CHOY, FARRIS, CJJ. bp	
1986		
Feb. 7	ORDERED OPINION (DUNIWAY) FILED AND JUDGMENT TO BE FILED AND ENTERED.	
Feb. 7	FILED OPINION—REVERSED.	
Feb. 7	FILED AND ENTERED JUDGMENT.	eal
Feb. 13	Filed intervenor-petr's bill of costs. 2/12	eal
Feb. 18	Recv'd ltr from Evelyn Frank, dated 2/12, re: error in the opinion. 2/12 (PANEL)	eal
Feb. 24	Filed motion & order (Dep Clk) granting resp an ext of time to & including Mar. 21, 1986 to file the petition for rehearing. 2/24	eal
Feb. 25	Filed intervenor-petrs' association of counsel, adding Stephen Berzon & Michael Rubin as special counsel with respect to intervenors' claim for attys' fees. 2/24	eal
Mar. 6	Filed Order (DUNIWAY, CHOY & FARRIS) It is hereby ordered that the next to the last line on pg 5 of the slip opinion in this case is amended to read as follows: (See case file for complete text).	eal
Mar. 10	Filed intervenor-petrs' notice of motion & motion for award of attys' fees and costs. 3/10 (CIVATT)	eal
Mar. 21	Filed Orig & 33 copies of respondent's Petition for Rehearing and Suggestion for Rehearing en banc. 3/20 (PANEL & ALL ACTIVE JUDGES)	sz
June 30	Received Orig & 33 copies of additional citations from respondent. 6/27 (PANEL & ALL ACTIVE JUDGES)	sz

DATE	FILINGS-PROCEEDINGS
July 14	Filed order (DUNIWAY, CHOY & FARRIS) The Petition for rehearing in banc is rejected, and the petition for rehearing is denied. *7/14* dl-
Jul 21	Filed as of 7/17, pet-intervenors' application for a 14 day extension of time to file brief & declarations in support of attys. fees application. 7/17 (Panel) ogm
Jul 21	Filed as of 7/18/86, Judge Kozinski's dissent from rejection of suggestion for rehearing en banc. ogm
1986	
JUL 23	MANDATE ISSUED (COSTS TAXED)
Aug 7	Filed as of 8/5, pet-intervenors' application for further extension of time to file brief & declarations in support of attys. fees application. (Panel) 8/4 ogm
Aug 11	Filed as of 8/8, Supplemental declaration of Michael Rubin in support of Intvs' request for extension of time. (Panel) 8/8 ogm

DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

6325 Security Boulevard
Baltimore, MD 21207

365 East High Rise
Telephone (301) 594-8260

November 30, 1984

Ralph M. Johnson, Esq.
Deputy Attorney General
350 McAllister Street
Room 6000
San Francisco, California 94102

Re: California State Plan Amendment No. 83-14—
Docket No. 84-6

Dear Mr. Johnson:

A copy of my recommended decision is enclosed. By copy of this letter, I am transmitting copies of the decision to all parties, and advising them of their right to file exceptions. In accordance with 45 CFR 213.32(b), parties may file exceptions to the hearing officer's findings and recommended decision within 20 days of receipt of this letter. Any such exceptions should be submitted to the attention of Irwin Cohen, Attorney Adviser, Room 669 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

Sincerely yours,

/s/ LAWRENCE J. AGELOFF

Lawrence J. Ageloff
Director
Hearing Staff

Enclosure

cc:
Evelyn R. Frank, Esq.
Brenda Kohn, Esq.

FQA-61:AJAgeloff:bw 11/30/84

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Docket No. 84-6

IN THE MATTER OF:
THE DISAPPROVAL OF CALIFORNIA STATE PLAN AMENDMENT 83-14

RECOMMENDED DECISION

Facts

California's State Plan Amendment 83-14, which was received by the Health Care Financing Administration (HCFA) on September 27, 1983 and denied on December 19, 1983, proposed to establish a medically needy income level (MNIL) for a family of two adults at 133⅓ percent of the State's AFDC payment level for a family of three. The proposed amendment was denied because it violated sections 1903(f)(1)(B), 1902(a)(4) and 1902(a)(19) of the Social Security Act (SSA) and Federal regulations at 42 CFR 435.1007.[1] The State requested reconsideration timely pursuant to section 1116(a)(2) of the SSA, 45 CFR 201.4 and 45 CFR Part 213. Following publication of the notice of hearing in the *Federal Register,*[2] the Legal Aid Society of Alameda County filed a Petition to Intervene which was granted by the Hearing Officer. Pursuant to a mutually agreed upon continuance, the hearing was held on July 2, 1984 in San Francisco, California.[3] All of the parties agreed that the hearing presented a question of law and

[1] See Attachment 1 hereto for a description of the citations given above

[2] 49 FR 10165, March 19, 1984

[3] The hearing was originally scheduled to be held on May 8, 1984.

not of fact. The hearing record was closed on November 10, 1984, 10 days after the date the last closing brief was received.

Issue

Whether California's proposed amendment to establish a MNIL for a family of two adults at 133⅓ percent of the State's AFDC payment level for a family of three is in violation of the law or regulations?

Applicable Law and Regulations

Section 1116(a)(2) of the SSA
Section 1903(f)(1)(B) of the SSA
Section 1902(a)(4) of the SSA
Section 1902(a)(19) of the SSA
42 CFR 435.1007
Regional Office Manual 2572
Section 2373(c) of the Deficit Reduction Act of 1984

Discussion

California's sole contention is that State Plan Amendment 83-14 is authorized by Regional Office Manual (ROM) 2572D[4] and should be approved. In addition to ROM 2572D, the Intervenor attacks the disapproval of 83-14 on several other grounds. The Intervenor argues that the Deficit Reduction Act (DRA) prohibits the disallowance of 83-14; the proposed amendment is consistent with Section 1903(f) of the SSA; if the proposed amendment is disallowed, the State should be given an opportunity to submit a new plan before fiscal sanctions are imposed; and due process precludes the Administrator from making a decision in this case. For the following

[4] See Attachment 2 hereto for a copy of ROM 2572D.

reasons, the arguments advanced by the State and Intervenor are rejected and it is recommended that the initial disapproval be affirmed.

ROM 2572 and the Deficit Reduction Act of 1984

ROM 2572 gave States the option of establishing a separate MNIL for two adults which was between 133⅓ percent of the AFDC payment level for one person and 133⅓ percent of the AFDC payment level for a family of three persons. The exercise of this option would result in a two adult family receiving a higher MNIL than a 2 person AFDC family. By setting the MNIL for two adults at the upper limit of 133⅓ percent of the AFDC payment level for a family of three persons, California's proposed amendment would be consistent with ROM 2572. The ROM has never been used by the San Francisco Regional Office, which was unaware of the ROM's existence until it was brought to its attention by the Intervenor's attorney (Tr. pp. 51, 52).

The State and Intervenor base their ROM 2572 arguments on several grounds. HCFA, they contend, is bound by its own regulations and procedures. However, ROM 2572 is not a regulation and unlike the procedure in *Morton* v. *Raiz*, 415 U.S. 199, 945 S. Ct. 1055 (1973), the procedure relied on by HCFA to limit MNIL payments to two adult families is supported by law (section 1903(f)(1)(B)(i)), regulation (42 CFR 405.1007), and congressional intent.

The ROM contains program instructions for regional offices. It serves as a supplement to other health insurance manuals and is intended for internal regional office use, i.e., for the use of regional office employees only. The foreward to the ROM instructs regional office employees not to cite the ROM to others, and the testimony of Mr. Campbell, who was the California Eligibility Specialist for the Regional Office from 1979 through 1983, that he was

not aware of the existence of ROM 2572 until it was brought to his attention by the Intervenor's attorney shows that the regional office's conduct did not cause California to propose 83-14. Nor was any evidence introduced which showed that California knew of or relied on ROM 2572 when it prepared its proposed plan amendment. ROM 2572 was not published in the *Federal Register* or the Code of Federal Regulations. The ROM is restricted to Central Office employees, and if anything, has less, but certainly no more importance than the SSA Claims Manual, a multi volume handbook containing internal instructions used by thousands of SSA employees for taking, developing and adjudicating applications for SSA benefits. Like the Claims Manual, the ROM is not a regulation, has no legal force, and does not bind HCFA. *Schweiker* v. *Hansen*, 450 U.S. 783, 101 S. Ct. 1468(1981). By its own terms, ROM 2572 is an internal interpretation of 42 CFR 435.1007[5] and section 1903(f) of the SSA. As such, it falls within the "interpretive rules" exception to the Administrative Procedures Act[6] (APA) and need not be published in the *Federal Register*. For the same reason, the revision of an internal interpretative rule need not be published with notice and comment in the *Federal Register*, especially when, as here, the internal interpretative instruction was never used in the region and was not relied upon by the State in fashioning its Amendment.

The Intervenor also posits that section 552(a)(1)(D) of the Freedom of Information Act (FOIA)[7] requires pub-

---

[5] This was previously 45 CFR 248.4(b)(4)(ii)(A)

[6] Section 552(a)(2) of the APA exempts from the publication requirement certain "statements of policy and interpretations which have been adopted by the agency," and administrative staff manuals.

[7] § 552(a)(1)(D) of the FOIA requires that each agency "shall . . . publish in the *Federal Register* . . . substantive rules of general applicability adopted as authorized by law, and statements of general

lication of the repeal of ROM 2572 in the *Federal Register* before repeal can take effect. However, section 552(a)(1)(D) is not controlling. As stated above, ROM 2572 was an internal regional office instruction, which was not published in the *Federal Register* since it met the exemption in section 552(a)(2) of the APA. In addition, ROM 2572 was HCFA's erronious [sic] attempt to explain an existing law and regulation and had no significant impact upon any segment of the public since it was not implemented in Region IX nor did the State of California rely on it in preparing and submitting its proposed amendment. Consequently, ROM 2572 is not a "substantive rule of general applicability" *Anderson* v. *Butz,* 550 F.2d. 459(1977), *Lewis* v. *Weinberger,* 415 F. Supp. 652 (D.N.M. 1976).

The FOIA section governing HCFA's repeal of ROM 2572 is 552(a)(2)(B) which states that each agency "shall make available for public inspection and copying—

(B) Those statements of policy and interpretations which have been adopted by the agency and are not published in the *Federal Register*;"

Section 552(a)(2)(B) is the category of the FOIA in which ROM 2572 falls—a category that does not require publication. Under FOIA HCFA was required to make ROM 2572 available for public inspection and copying and was not precluded from changing its policy interpretation absent publication.

Although I may sympathize with the intended result of the proposed Amendment, Congress specifically rejected ROM 2572's interpretation of section 1903(f) of the SSA. In its deliberation of DRA, the House bill permitted States to establish MNIL for a family of two adults up to 133⅓ percent of the three person AFDC standard. The

---

policy or interpretations of general applicability formulated and adopted by the agency."

Senate made no such provision and the Conference agreement did not include the House provision. Conf. Rep. on H. Rep. 98-861, 98th Cong. 2nd Sess (1984), p. 1361. Thus, there is no support for the argument that ROM 2572 correctly interpreted § 1903(f). Similarly, there is no support for the claim that DRA "specifically prohibited the Secretary from taking any regulatory action against a State based on its use of an adult couple MNIL." (Int. Br. at p. 8) Section 2373(c) of DRA, which Intervenor relies on, is limited to violations of section 1902(a)(10)(C)(i)(III) of the Act and does not touch upon violations of section 1903(f).

The legislative history of DRA indicates that HCFA's refusal to implement ROM 2572 is correct, and supports the disallowance of State Plan Amendment 83-14.

Sanctions and Due Process

There are two other arguments advanced by the Intervenor which should be discussed. The Intervenor states that if the initial disallowance is affirmed, the State should be given an opportunity to submit a new plan before fiscal sanctions are imposed. However, this issue is not before the Hearing Officer. This is a hearing under 45 CFR 201.4[8] and is limited to a reconsideration of the initial determination disallowing California's State Plan Amendment 83-14. The determination under review does not involve the withholding of Federal payments.

The final argument involves a due process claim. It states that the Administrator may not, consistent with due process, participate in making a decision in this proceeding. It should be noted that section 1116(a)(2) of the SSA specifically states that [t]he Secretary shall affirm, modify or reverse his original determination . . . ."

---

[8] A State is entitled to a hearing in accordance with 45 CFR 201.6 when Federal payments are withheld.

Thus, the Secretary, through the Administrator to whom she has delegated the authority to hold these hearings, is following a Congressional directive in holding these hearings. Nor can it be persuasively argued that Congress was not aware that the Secretary was also the original decision maker when it considered and passed section 1116(a)(2) of the Act. In any event, although I do not find the due process argument persuasive, it is not within my jurisdiction since constitutional questions can only be answered by the Courts.

Findings and Conclusions

1. ROM 2572 is an internal RO instruction. It is not a regulation, has no legal force and does not bind HCFA.

2. The State of California did not rely on ROM 2572 in preparing its State Plan Amendment 83-14.

3. ROM 2572 meets the "interpretive rule" exception to the APA and was not required to be published in the *Federal Register*.

4. ROM 2572 is covered by section 552(a)(2)(B) of the FOIA and was not required to be published in the *Federal Register*.

5. Congress specifically rejected ROM 2572's interpretation of section 1903(f) of the Act.

6. Section 2373(c) of DRA is limited to violations of section 1902(a)(10)(c)(i)(III) of the Act.

7. DRA supports HCFA's refusal to implement ROM 2572.

8. This proceeding does not involve the imposition of financial sanctions and thus the question as to whether the State should be given an opportunity to submit a new plan before such a penalty is imposed is not before me.

9. Under section 1116(a)(2) of the SSA, the Administrator is authorized to make a hearing decision on State Plan Amendments.

10. California's State Plan Amendment 83-14 was not condusive to the proper and efficient operation of the plan required by section 1902(a)(4) since it was in violation of section 1903(f) of the Act.

11. California's State Plan Amendment 83-14 violates section 1902(a)(19) of the Act since, rather than providing safeguards to assure proper eligibility determinations, it proposed to establish eligibility criteria for an adult family of two which violate section 1903(f).

Decision

I recommend that the disapproval of California's State Plan Amendment 83-14 be affirmed.

November 30, 1984
Date

/s/ LAWRENCE J. AGELOFF
Lawrence J. Ageloff

Attachment 1

Section 1903(f)(1)(B) states:

> (B)(i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133⅓ percent of the highest amount which would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under Part A of title IV of this Act.

Section 1902(a)(4) states in pertinent part: A State plan for medical assistance must provide . . . such methods of administration . . . as are found by the Secretary to be necessary for the proper and efficient administration of the plan. . . ."

Section 1902(a)(19) states:

> "A State plan for medical assistance must provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients."

42 CFR 435.1007 states in pertinent part:

> "(a) FFP is available in expenditures for services provided to medically needy recipients whose annual income after deductions specified in § 436.831(a) and (c) and § 436.832 does not exceed the following amounts, rounded to the next higher multiple of $100:
>
> (1) For couples and families of two or more, 133⅓ percent of the highest money payment that would ordinarily be made under the State's AFDC plan to a family of the same size without income and resources.

If the States's AFDC plan specifies a maximum family size beyond which there is no increase in benefits, the medically needy income levels for families whose size exceeds that maximum will be determined by adding an amount for each family member over the maximum size. These amounts must be reasonably related to the amounts by which the State's AFDC plan increases benefits for additional family members in families below the maximum size.

Attachment 2

2572. LIMITATIONS ON FFP

D. *Medically Needy: Determination of a Medically Needy Income Level for Two Adults.*—Reissuance of PIQ-77-77(MSA), June 27, 1977.

STATEMENT OF REPLY: This is in response to a verbal request from Barbara Costa of your office for clarification of policy regarding the establishment of medically needy income levels. Specifically, the request addressed the issue of setting a medically needy income level for two adults based upon the AFDC payment to a two-person family composed of one adult and one child.

CITATION OF LAW: Section 1903(f) of the Social Security Act.

REGULATION(S): 45 CFR 248.4(b)(4)(ii)(A) [42 CFR 425.1007]

REFERENCE TO OTHER RESOURCES: PIQ 76-15(MSA); NCSS D-2, July, 1976; Office of Research and Statistics, SSA.

DISCUSSION: This issue involves concerns similar to those inherent in the determination of a medically needy income level for a family of one.

PIQ 76-15(MSA) dated January 22, 1976, addresses this subject and recognizes the existence of the differing maintenance needs of dependent children and medically needy adults. It reads:

> "Per Section 1903(f)(3) of the Social Security Act and 45 CFR 248.4(b)(4)(ii)(A) in applying the 133⅓ percent limitation to the medically needy income levels for single individuals, the "highest amount which could ordinarily be paid" under the State AFDC program is an amount reasonably related to the State AFDC payment amount for two-person families. Where there is no amount of payment for one person in the AFDC program which is reasonably related to the AFDC payment for two-person families, for example, because the AFDC plan does not provide for payments to single individuals, or such payments are based on reduced need standards applicable only

only to dependent children and are therefore not related to reasonable maintenance needs of medically needy adults, an amount for one-person families must be established by the State to meet the requirements of this provision."

Additional documentation of the differing maintenance needs of dependent children and adults is offered in the statistics of Federal and State cash payments to these persons:

(1) A comparison of the States' 1976 basic need standards for an AFDC family of two (one adult and one child) and an AFDC family of three (one adult and two children) reveals an average monthly difference of $54.09. Thus, the presence of one additional child in an AFDC family is recognized as incurring an additional $54.09 to that family's basic needs.

(2) A survey of the 1976 payment levels of twenty-two States offering optional State supplementation for "Basic Needs" to aged persons living independently reveals an average monthly difference of $109.19 between the payment allotted an individual and the payment allotted a couple. Thus, the presence of one additional aged adult in a family is recognized as raising the family's maintenance needs by $109.18.

(3) The Supplemental Security Income financial eligibility standards effective July 1, 1977, authorize a payment of $177.80 to a single person and $266.70 to an eligible couple. Thus, the presence of one additional aged adult is recognized as contributing $88.90 to the couple's maintenance needs.

In order to effectively acknowledge the greater maintenance needs of an adult as opposed to those of a child, the States may set a separate medically needy income level for two adults which would be established between 133⅓ percent of the AFDC payment level for one person and 133⅓ percent of the AFDC payment level for a family of three persons. For example, Montana has established a medically needy income level for two adults at $287 which is within the aforementioned limits of $167 and $334 respectively. This level conforms to the above criteria, satisfies the regulatory requirement of "reasonable relatedness," and recognizes the differing maintenance needs of an adult and a child. The medically needy income level for one adult and one child may not, of course, exceed 133⅓ percent of the AFDC cash payment for a family of two persons.

In view of the greater maintenance needs of an adult as opposed to a child, the regulatory mandate of "reasonably related" income levels contained in 45 CFR 248.4(b)(4)(ii)(A), and in the interest of comparable treatment of persons with similar needs, the States should have the option of establishing separate medically needy income levels for a two-person family consisting of one adult and one child and for a two-person family composed of two adults.

June 19, 1979

HCFA-ROM-31

[JOINT EXHIBIT 1]

OF HEALTH AND MAN SERVICES
FINANCING ADMINISTRATION

Submit 6 Copies.

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL
FOR: HEALTH CARE FINANCING ADMINISTRATION

TRANSMITTAL NUMBER	STATE
83-12	California

PROGRAM IDENTIFICATION: Medicaid

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

PROPOSED EFFECTIVE DATE: July 1, 1983

039

TYPE OF PLAN MATERIAL (Check One)

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☑ AMENDMENT

COMPLETE NEXT 4 BLOCKS IF THIS IS AN AMENDMENT (Separate transmittal for each amendment)

FEDERAL REGULATION CITATION: 42 CFR 435, 436 & 440

NUMBER OF THE PLAN SECTION OR ATTACHMENT	NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT
Attachment 2.6-A (page 7) Supplement 1 to Attachment 2.6-A	Attachment 2.6-A (page 7) Supplement 1 to Attachment 2.6-A

SUBJECT OF AMENDMENT

Eligibility Conditions & Requirements

GOVERNOR'S REVIEW (Check One)

☑ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
☐ OTHER, AS SPECIFIED:

SIGNATURE OF STATE AGENCY OFFICIAL

TYPED NAME: Peter Rank

TITLE: Director

DATE: September 20, 1983

RETURN TO:
Department of Health Services
Office of Regulations
714 P Street, Room 1601
Sacramento, CA 95814

FOR REGIONAL OFFICE USE ONLY

DATE RECEIVED	DATE APPROVED
09-27-83	

PLAN APPROVED – ONE COPY ATTACHED

EFFECTIVE DATE OF APPROVED MATERIAL

SIGNATURE OF REGIONAL OFFICIAL

TYPED NAME: John L. O'Hara, Jr.

TITLE: Associate Regional Administra

REMARKS:

Joint Exhibit 1
Page 1 of 3

[JOINT EXHIBIT 1]

22

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State California

ELIGIBILITY CONDITIONS AND REQUIREMENTS

040

23 [JOINT EXHIBIT 1 – Continued]

Citation	Condition or Requirement
	___ The disregards of the State supplementary payment program, as follows:
	___ The disregards of the SSI program, except for the following restrictions.
	___ e. For the medically needy, the agency applies disregards, as specified in Supplement 3 to Attachment 2.6A, in addition to items 1a-d.
435.812	2. Medically Needy Income Levels
	X a. All groups
	One MNIL is used for all covered medically needy groups as follows:
	___ (1) MNIL equal to the highest income or payment standard used in the cash assistance programs (or optional State supplement) related to the covered medically needy groups.
	X (2) MNIL equal to highest level permitted under 42 CFR 435.1007, except for 2 adults, MNIL equal to 133 1/3% of AFDC payment level for 3 persons.

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TN # _____
Supersedes Approval Date Effective Date

Revision: FA-AT-81-37

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

SUPPLEMENT 1 TO
Attachment 2.6-A

State California

INCOME LEVELS - MEDICALLY NEEDY

041

_x_ Applicable to all groups ___ Applicable to:

Based on 133 1/3 percent of the AFDC payment levels.

Family Size	Net income level protected for maintenance ___ urban only ___ urban & rural	Amount by which Column (2) exceeds limits specified in 42 CFR 435.1007 1/	Net income level for persons living in rural areas	Amount by which Column (4) exceeds limits specified in 42 CFR 435.1007 1/
(1)	(2)	(3)	(4)	(5)
1	459	0		
2	567	0		
2 Adults	709	142		
3	709	0		
4	834	0		
5	959	0		
6	1075	0		
7	1175	0		
8	1284	0		
9	1384	0		
10	1492	0		
Additional Person Add:				

1/ The agency has methods for excluding from its claim for FFP payments made on behalf of individuals whose income exceeds these limits.

Joint Exhibit 1
Page 3 of 3

TN #
Supersedes
TN #

Approval Date Effective Date

[JOINT EXHIBIT 2]

DEC 19 1983

Mr. Peter Rank
Director
Department of Health Services
714/744 P Street, Room 1601
Sacramento, California 95814

Dear Mr. Rank:

We have reviewed California's Medicaid State Plan Amendment No. 83-14 and are unable to approve the proposed changes to revise the medically needy income level (MNIL) for a family of two adults.

Section 1903(f)(1)(B) of the Social Security Act and implementing Federal regulations at 42 CFR 435.1007 provide that Federal Financial Participation (FFP) in expenditures for services is only available where the income (after deduction of incurred medical expenses) for a two adult family does not exceed 133⅓ percent of the highest amount ordinarily paid to a two person family (without income or resources) under the State's Aid to Families with Dependent Children (AFDC) program. State Plan Amendment No. 83-14 proposes to establish a MNIL for two adults at 133⅓ percent of the State's AFDC payment level for a family of three.

Although the 133⅓ limit under section 1903(f)(1)(B) of the Act is not strictly speaking a State plan requirement, the statute is clear that FFP is not available for medical assistance to persons whose income exceeds that limit. By

setting the MNIL for a family of two adults at 133⅓ percent of the AFDC level for a family of three, California could provide medical assistance to individuals with income in excess of the limitation. In light of that fact, approval of the proposed State plan amendment would not be consistent with the "proper and efficient operation of the plan" and would thus violate section 1902(a)(4) of the Act. Further, such approval would not be "consistent with simplicity of administration" as required under section 1902(a)(19) of the Act.

Based on the above and after consultation with the Secretary as required by 45 CFR 201.3, I am hereby disapproving the subject plan amendment because it is in violation of existing Federal law and regulations. If you are dissatisfied with this determination you may petition for reconsideration of the issue in accordance with the procedure set forth in 45 CFR 201.4.

If you wish to discuss the implications of this disapproval further, please contact Mr. John L. O'Hara, Jr., Associate Regional Administrator, 100 Van Ness Avenue, 14th Floor, San Francisco, California 94102.

Sincerely yours,

/s/ CAROLYNE K. DAVIS, PH.D.
Carolyne K. Davis, Ph.D.

[JOINT EXHIBIT 3]

Federal Register/Vol. 49, No. 54/Monday, March 19, 1984/Notices

Health Care Financing Administration

Medicaid Program; Hearing;
Reconsideration of Disapproval of a
California State Plan Amendment

Agency: Health Care Financing Administration (HCFA), HHS.
Action: Notice of hearing.

SUMMARY: This notice announces an administrative hearing May 8, 1984, in San Francisco, California, to on reconsider our decision to disapprove California State Plan Amendment 83-14.

Closing date: Requests to participate in the hearing as a party must be received by April 3, 1894.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a California State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of

the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether California's proposal to revise the Medically Needy Income Level (MNIL) for determing Medicaid eligibility for a family of two adults violates section 1903(f)(1)(B), 1902(a)(4) and 1902(a)(19) of the Social Security Act and Federal regulations at 42 CFR 435.1007.

Section 1903(f)(1)(B) of the Social Security Act and implementing Federal regulations at 42 CFR 435.1007 provide that Federal Financial Participation (FFP) in expenditures for services is only available where the income (after deduction of incurred medical expenses) for a two adult family does not exceed 133⅓ percent of the highest amount ordinarily paid to a two person family (without income or resources) under the State's Aid to Families with Dependent Children (AFDC) program. California State Plan Amendment No. 83-14 proposed to establish a MNIL for two adults at 133⅓ percent of the State's AFDC payment level for a family of three.

Although the 133⅓ limit under section 1903(f)(1)(B) of the act is not strictly speaking a State plan requirement, the statute provides that FFP is not available for medical assistance to persons whose income exceeds that limit.

By setting the MNIL for a family of two adults at 133⅓ percent of the AFDC level for a family of three, California could provide medical assistance to individuals with income in excess of the limitation. Therefore, HCFA determined that the proposed State plan amendment would not be consistent with the "proper and efficient operation of the plan" and would thus violate section 1902(a)(4) of the Act. In addition HCFA has determined California's proposed plan violates section 1902(a)(19) of the Act which requires a plan to be "consistent with simplicity of administration."

The notice to California announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Peter Rank,
Director, Department of Health Services, 714/744 P Street, Room 1601, Sacramento, Calif.

Dear Mr. Rank: This is to advise you that your request for reconsideration of the decision to disapprove California State Plan Amendment 83-14 was received on February 16, 1984. You have requested a reconsideration of whether this plan amendment, which would revise the Medically Needy Income Level for determining Medicaid eligibility for a family of two adults, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on May 8, 1984, at 10 a.m., in Room 26A, 100 Van Ness Avenue, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 13, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 84-7284 Filed 3-16-84; 8:45 am]

BILLING CODE 4120-03-M

[JOINT EXHIBIT 4]

DEPARTMENT OF HEALTH SERVICES
714/744 P Street
Sacramento, CA 95814 Feb 16 1984

Mr. John L. O'Hara, Jr.
Associate Regional Administrator
Health Care Financing Administration
100 Van Ness Avenue, 14th Floor
San Francisco, CA 94102

Dear Mr. O'Hara:

This is to request reconsideration of HCFA's disapproval of California's State Plan Amendment (SPA) No. 83-14 proposing to increase the maintenance need income levels (MNIL) applicable to its medically needy (MN) families, and to provide MNIL for families of two adults separate from the MNIL for other families of two.

Ms. Davis' stated reasons for this disapproval were: (1) The proposal to establish a separate MNIL for families of two adults at 133⅓ of the State's Aid to Families with Dependent Children (AFDC) payment rate for a family of three exceeded the limits for federal financial participation (FFP) described in 42 CFR 435.1007; (2) allowance of this higher MNIL for families of two adults would "not be consistent with the 'proper and efficient operation of the plan' and would thus violate Section 1902(a)(4) of the Act"; and, (3) "such approval would not be 'consistent with simplicity of administration' as required under Section 1902(a)(19) of the Act".

I am unable to ascertain the precise reasons for disapproval. HHS/HCFA has officially recognized in HCFA Regional Office Manual, Part 6, Medicaid Guidelines, Transmittal No. 30 (June 30, 1979), Section 2572-D. "Medically Needy: Determination of a Medically Needy Income Level for Two Adults" that, based on the existence

of the differing maintenance needs of dependent children and medically needy adults, a higher maintenance need for families composed of two adults is legally appropriate under the Social Security Act and HHS/HCFA regulations. The guideline states that it is appropriate to establish an MNIL for two adults between 133⅓ percent of the AFDC payment level for one person and 133⅓ percent of the AFDC payment level for a family of three persons. The justification for this guideline is the regulatory mandate of "reasonably related" income levels in 42 CFR 435.1007. This particular regulatory language has not been amended to date and does not appear to be affected by subsequent legislation, including the Tax Equity and Fiscal Responsibility Act of 1982.

Accordingly, because this guideline would appear to remain valid, and because the Department's MNIL for two adults does not exceed the guideline limits, disapproval of the State Plan Amendment on the basis that it exceeds FFP limits in 42 CFR 435.1007 appears to be incorrect.

Additionally, because, as is noted in the disapproval letter, 42 CFR 435.1007 is not a State Plan requirement, I fail to see how this can be the basis of a disapproval of the SPA by HHA/HCFA under 45 CFR 201.3. This regulation, and the statute being implemented, Section 1116 of the Social Security Act (42 U.S.C., Section 1316), relate only to the Administrator's authority to approve or disapprove the State Plan and SPAs.

Finally, the Administrator's letter states that approval of the State Plan Amendment would not be consistent with the "proper and efficient operation of the plan" (Section 1902 (a)(4) of the Act) or "consistent with simplicity of administration" (Section 1902 (a)(19) of the Act). The basis for this contention is not clear. This conclusion appears to be based on the assumption that the two adult

MNIL exceeds maximum FFP limits. This conclusion, as was pointed out above, is inconsistent with HHS/HCFA policy interpretations.

In conclusion, the MNIL for two adults does not exceed the maximum FFP limit set by HHS/HCFA. As such, and because there has been no disruption in the administration of the Medi-Cal program as a result of this change, I believe the disapproval of SPA No. 83-14 is erroneous and I request reconsideration of this decision in accordance with 45 CFR 201.4.

If you have any questions regarding the above, please contact Caroline Cabias, Chief, Medi-Cal Eligibility Branch at (916) 445-1912.

Sincerely,

Original Signed By
Pat Rauscher

Peter Rank
Director

cc: Jim Scott
Office of Assistant Secretary for
Legislation
Department of Health and Human
Services
200 Independence Avenue,
Southwest
Washington, DC 20201

[JOINT EXHIBIT 5]

The Administrator
Washington, D.C. 20201

MAR 13 1984

Mr. Peter Rank
Director
Department of Health Services
714/744 P Street, Room 1601
Sacramento, California 95814

Dear Mr. Rank:

This is to advise you that your request for reconsideration of the decision to disapprove California State Plan Amendment 83-14 was received on February 16, 1984. You have requested a reconsideration of whether this plan amendment, which would revise the Medically Needy Income Level for determining Medicaid eligibility for a family of two adults, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on May 8, 1984, at 10 a.m., in Room 26A, 100 Van Ness Avenue, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the

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names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,
/s/ CAROLYNE K. DAVIS
Carolyne K. Davis, Ph.D.

Intervenors' Exhibit 13

Department of Health and Human Services
Health Care Financing Administration

Docket No. 84-6

IN THE MATTER OF CALIFORNIA STATE PLAN
AMENDMENT NO. 83-14

DECLARATIONS OF: Alma Bales, Donald A. Barrier, Allan Bierman, James Jones, Ronald Kwiek, Loretta McParland, Donald Minor

---

DECLARATION OF ALMA BALES

I, Alma Bales, declare:

1. I live with my husband at 3850 Callan Boulevard, in South San Francisco. The matters contained in this declaration are within my personal knowledge, and if called as a witness, I could competently testify thereto.

2. Both my husband and I are 65 years old. Our total income consists of social security benefits. I receive $355 and my husband receives $575 per month.

3. I have cancer of the throat. It was diagnosed about two years ago. At that time, I had laser surgery in San Francisco at Children's Hospital. The cancer was not cured, however, and I again had surgery one year later at Stanford University Medical Center. That surgery was followed by six months of daily radiation therapy, which I had at Stanford. Recently, the doctors have stopped the radiation treatments, since they have left me quite exhausted and ill. I have incurred medical bills of thousands of dollars for these treatments.

4. My husband has high blood pressure. He has suffered three strokes, the first in 1972, the second in approximately 1973, and the third only recently. All three strokes were on his right side. He walks with great difficulty, using a cane. He must control his high blood pressure with

medications and a special diet. In addition I try to take him to the doctor at least every other month. To date, we have been paying for these medical expenses ourselves.

5. We receive Medi-Cal with a share of cost. At the moment, our share of cost is $356. However, I am advised that the San Mateo County Welfare Department has erroneously failed to increase our maintenance need level to $709, so that our share of cost should be $201. I am in the process of trying to correct this problem.

6. I have received bills from Stanford Medical Center for my radiation treatments and surgery. The bills, as I have already stated, are for thousands of dollars of care. The hospital is investigating to determine why the bills have not been paid by Medi-Cal. At some point, we will have to pay the hospital for our share of cost. I expect that Medi-Cal will pay the remainder of the bills.

7. We cannot afford a monthly share of cost of $356. Our rent alone is $269. Our PG&E bills run about $18, and our telephone bill is $30 per month. We have very high food bills (about $240 per month), because both my husband and myself need special diets because of our medical conditions. We have a ten year old car, which uses quite a lot of gas. At the time that I was going to Stanford daily, (a round trip of 50 miles from my home), we were paying at least $50 per month for gasoline. We also have expenses for laundry and dry cleaning, car insurance, and items of clothing which need replacement. As it is, we have barely enough money to meet our living expenses. Frequently, we run out of money at the end of the month, before our bills are paid.

8. We will have serious financial difficulties in paying off our bill to Stanford. It is some comfort that the bill will be only $201, rather than $356, per month. It is very difficult dealing with the emotional and physical problems associated with cancer, without having to worry also about medical bills which we will never be able to pay.

I declare under penalty of perjury that the foregoing is true and correct, and was executed in South San Francisco, California.

DATED: March 30, 1984

/s/ ALMA BALES
Alma Bales

DECLARATION OF DONALD A. BARRIER

I, Donald A. Barrier, declare that the matters stated herein are within my personal knowledge, and if called as a witness, I could testify competently thereto:

1. My wife and I live in Chico, in Butte County, California. I am 57 years old. I have been completely disabled for slightly over nine years. At age 48 I suffered several strokes and epileptic seizures caused by a severe malformation of the arteries in the left side of my brain. The seizures which accompanied the strokes caused several (ten at present) thoracic spinal compression fractures. I am also afflicted with osteoporosis which, besides causing severe discomfort, has caused pinched nerves in my spinal column, making walking without a cane extremely difficult. I have grand mal epileptic seizures which, in addition to causing compressed fractures, can be fatal (through asphyxiation) if not controlled by medication. I am constantly in pain because of severe headaches caused by the arterial malformations and from the spinal trauma I have suffered. I also have angina pains, the cause of which is presently uncertain. I must take medications and be under constant periodic medical supervision if I am to survive. I am on Medicare and Medi-Cal. I currently have no share of cost for Medi-Cal.

2. I have been married for 37 years. My wife does not work, as taking care of me is a full time job. Our total monthly income is $637, of which $587 is Social Security disability and $50 is Veterans Administration disability. Our rent and utilities are $200 per month. Automobile gasoline and maintenance averages $59 per month, home repairs and maintenance $20 per month. In my condition, having a car is absolutely necessary, for trips to the doctor and to the hospital in the event of an emergency. I must also make periodic trips to the Veterans Hospital in San Francisco. Clothing expenses average about $15 per

month. Food and groceries run about $260 per month. Insurance, licenses and miscellaneous taxes cost us $51 each month. In addition we must spend an average of $10 per month on non-precription drugs and medications and $7 per month on prescription drugs not covered by Medi-Cal. Dental care and eyeglasses cost us another $15 a month, on the average. My wife does not receive Medi-Cal, so we must pay cash for her doctor and dental visits, eye examinations and eyeglasses.

3. It is rare to find medical doctors in our area who will accept Medi-Cal. Hospitals and pharmacies will accept Medi-Cal, which enables me to survive. Medi-Cal now pays for my prescription drugs which amount to approximately $60 per month. It has also paid for hospital tests which in the past year would have averaged at least another $60 per month. I take Mysoline and Codeine on a daily basis, which as of now are paid for by Medi-Cal. I also take, at less frequent intervals, Nitroglycerine, Valium and Motrin, which Medi-Cal does not pay for. If it became necessary for me to assume any share of cost for Medi-Cal, I don't think that I could survive either physically or financially. As you will note, our expenses currently equal our income.

I declare under penalty of perjury that the aforesaid is true and correct and was executed in Chico, California, on March 26, 1984.

/s/ DONALD A. BARRIER
Donald A. Barrier

DECLARATION OF ALLAN BIERMAN

I, ALLAN BIERMAN, declare that the matters stated herein are within my personal knowledge, and if called as a witness, I could testify competently thereto:

1. My wife and I live in Copperopolis, in Calaveras County, California. I am 67 and my wife is 69 years old. I have a severe heart condition; I have had open heart surgery and have artificial valves and a pacemaker. My wife has lung cancer. Consequently, we have very high medical expenses. My wife recently had to be hospitalized in San Mateo for seven (7) days. The hospital bill was over $15,000. Our combined Social Security, which is our sole source of income, is $955 per month. We currently have a $219 Medi-Cal share of cost. This leaves us with $736 to meet our expenses and pay off our debts.

2. Our house payments are $439 per month. We pay an average of $150 per month for electricity, because we live in a rural area where all utilities, including our well pump, are electric. Our phone bill is about $25 per month, and gas for our car costs us about $70 per month. We then have to spend for groceries and insurance. I use a walker, which costs $75 per month to rent. Medi-Cal used to cover the entire cost of the walker, but now only pays part of the cost. Without it, I can't get around. I also need pure oxygen, a tank per week, because of my heart condition. Oxygen costs $50 a tank, most, but not all of which is paid by Medicare.

3. Our medical bills, with our medications, average around $150 per month. Some months they are as high as $400 to $500. We are currently in debt over $1,600, and I don't know how we will pay that off. With out income and expenses we have nothing left over, but in fact go further in the red each month. We only spend for the bare necessities; we can afford none of the "extras."

4. If our Medi-Cal share of cost were to increase, I don't see how we could meet the cost. To forego my oxygen or medications would put me in a life threatening situation. If my wife were to forego any part of her lung cancer treatment, her life would certainly be in jeopardy.

I declare under penalty of perjury that the aforesaid is true and correct and was executed in Copperopolis, California, on February 16, 1984.

/s/ ALLAN C. BIERMAN
Allan Bierman

DECLARATION OF JAMES JONES

I, James Jones, declare that the matters stated herein are within my personal knowledge, and if called as a witness, I could testify competently thereto:

1. I live with my wife, Bessie Mae Jones, in Berkeley, Alameda County, California. My wife and I are 61 years old.

2. I am disabled by severe arthritis in my back and a chronic heart condition. I am on Social Security Disability, and receive $521 per month. My wife works as a substitute teacher in Berkeley and Oakland. Her income varies between $100-$200 per month, depending upon how often she is called to work.

3. My wife has diabetes and a severe sinus condition. I am covered by Medicare as well as Medi-Cal because I am on Social Security Disability, but my wife is not. She goes to the doctor two to three times monthly, for blood sugar tests and treatment of her sinus condition. She takes Drixoral daily for her sinuses, which costs $23 for 100 tablets. She also takes Diabinese for diabetes, and is on a special, no-sugar diet. The diabetic foods she must have are very expensive.

4. In or about 1976, I had a heart attack. In or about 1979, I had another one. Both times, I was in the hospital for several weeks. For my heart condition and arthritis, I take potassium cholride, Digoxin, Lesix and Prednisone daily. I also take Tylenol and vitamin C daily, which Medi-Cal does not cover. In addition, I go to the doctor at least every six weeks to monitor my medical condition.

5. My wife and I own our home in Berkeley. Our mortgage payments are $373 per month. Our utilities, including PG&E, water and garbage, run about $100 per month. Our grocery bill is about $125 per month—high because of my wife's expensive diabetic foods. Our telephone bill is about $40 per month. Insurance, transportation, clothing and other incidental expenses also

come out of our income, which varies from about $620-$720 per month. Some months we are a few dollars ahead, some months a few dollars behind. If we had any higher share of cost on Medi-Cal, we would have to cut back on food or doctors' visits, in order to make ends meet. I cannot do without my medications, but I could not afford to pay for them myself. It would be also very dangerous for my wife to do without proper medical care, as her diabetes must be monitored constantly. Her health is poor now, but if she gets so sick that she can't work at all, we will be in much worse shape financially.

I declare under penalty of perjury that the aforesaid is true and correct and was executed in Berkeley, California, on 4-4-1984.

/s/ JAMES C. JONES

James Jones

DECLARATION OF RONALD KWIEK

I, Ronald Kwiek, declare that the matters stated herein are within my personal knowledge, and if called as a witness, I could testify competently thereto:

1. My wife and I live in Angwin, in Napa County, California. I am 41 years old and have had Multiple Sclerosis (M.S.) for the past thirteen years. I am subject to frequent bladder-kidney (G.I.) infections and pneumonia, which have put me in the hospital on numerous occasions. I have been hospitalized 32 times since 1978, each time for approximately seven days. Most recently I was hospitalized from December 1983 to late March 1984, during which time I underwent two surgeries.

2. I receive $719 per month from Social Security. My wife works as a teacher part-time during the school year. During those nine months her monthly income varies from $250 to $550. Our Medi-Cal share of cost therefore varies a great deal, going as high as $324 when my wife is working the greatest number of hours. In January and February 1984, our share of cost was $212. In March it was $95.

3. I receive Medicare as well as Medi-Cal. Because I have been hospitalized so frequently, I have used up most of my Medicare hospitalization coverage. I have used up 11 days of the 60 day lifetime reserve of Medicare covered hospital care. The hospital insurance department has recommended that, instead of using up my lifetime reserve, I pay the share of cost and go on Medi-Cal, which I have done since December. Therefore we are paying our entire share of cost to the hospital each month that I must be in the hospital.

4. Our regular monthly expenses total, on average, $820. We pay $375 per month in rent, utilities $50, phone $60, garbage $10, car $25, credit union payments $30, food $150, and clothing and supplies $120. Maintenance expenses for our car and my wheelchair add another

$200-$300 per year onto our expenses. I require Home Health and Physical Therapy follow-through care each time I return home from the hospital. Medi-Cal no longer covers these expenses; Medicare pays 80% and we pay the remaining 20%. My medications, for maintenance of G.I. tract infections and other problems connected with M.S., cost $30 per month. When I am not in the hospital I must make weekly visits to the doctor for urinalysis and check-ups.

5. Because my medical expenses are so high, almost all of my wife's salary is spent meeting our share of cost. It is very difficult to save any of her salary for the summer months when our sole source of income is my $719 in Social Security. Our expenses exceed the current $709 maintenance need level, and they reflect a bare minimum: my medical supplies, which cost about $1,000 per year, are absolutely necessary. We must have a car, as I am confined to a wheelchair, and there is, in any case, very little public transit in our area. If our maintenance need level were decreased we simply could not meet our share of cost. My ability to receive absolutely necessary care for recurrent G.I. infections, pneumonia, and other complications arising from M.S. would be in serious jeopardy, and with it my life.

I declare under penalty of perjury that the aforesaid is true and correct and was executed in Angwin, California, on March 23, 1984.

/s/ RONALD KWIEK

Ronald Kwiek

DECLARATION OF LORETTA McPARLAND

I, LORETTA McPARLAND, declare:

1. I live with my husband, Hubert McParland, at 2027 V Street, Merced, California.

2. I am 59 years old and my husband is 63. My husband suffers from heart problems and had open heart surgery in 1976 and again in 1980. He suffered a major heart attack in 1983, for which he was hospitalized 17 days. Hubert also suffered from bladder cancer, until he had a urostomy in 1980. The urostomy means that he periodically suffers infections in his abdominal area and he must constantly wear urine bags.

3. Hubert visits his internist at least once per month and more frequently if necessary. He also visits a urologist at Stanford University Hospital, about 130 miles from our town, every four to six months, and we must pay for transportation costs. He takes digoxin as a heart medicine, vasodilan for blood circulation, inderal for high blood pressure, lorelco for cholesterol, and he keeps some nitroglycerine tablets on hand at all times. Every 24 hours, he is required to use a nitroduro patch directly on his skin to prevent chest pains. Hubert's urostomy bags must be replaced anywhere from 10 times a month to twice a day, depending on the weather, his fluid intake or infectious conditions. To attach his urostomy bags, he must use about ten 4 by 4 patches each month and numerous medicated wiping pads. With a urostomy, Hubert's kidney functioning must be kept up, so he is required to drink large quantities of fruit juices. I buy him, in addition to other juices, 48 oz. bottles of cranberry juice, which he drinks in about two days' time. Each bottle costs close to $2.00. Also, his heart condition requires that his diet consist of chicken and fresh fish and vegetables, but no fatty foods. I cannot make casseroles or food dishes that can be made in quantity and frozen or that in other ways stretch our food money because they require fatty or high

cholesterol foods that Hubert is not allowed to eat. For instance, Hubert is not supposed to eat creamed tuna or meatloaf, which are budget dishes. These are the kinds of meals I was used to making for years in order to feed a family of six. As a result of Hubert's special diets, we must spend a lot of our money on food. I must buy a lot of fresh fish, which is not easy to find in Merced. Often I must shop at a specialty fish store which is expensive. Finally, Hubert's medical condition makes him especially prone to colds, flu, and infection, and he also needs more careful treatment for these common illnesses than do persons without his medical problems.

4. I have hypoglycemia and a thyroid condition. I also am supposed to be on a special diet. Ideally, I am supposed to have a doctor's examination every three months, but we have not been able to afford it. I take thyroid medicine daily. I have been prescribed premarin, but I have not purchased it because we cannot afford it. I have recently experienced dizzy spells, when I nearly fainted. My doctor has informed me that I need blood tests to check my blood sugar and cholesterol levels, but I have not obtained them because we cannot afford them. To me, Hubert's condition seems more life-threatening, so his medical needs come first in our budget.

5. Our main source of income is Hubert's Social Security disability insurance, which is $637 per month. He also receives a small Teamsters Pension of $66 per month and a Veterans Administration pension of $24. Our total monthly income is $727. I have no income. Currently, our monthly expenses are:

House* – insurance and taxes	$ 72.00
Gas, electricity, telephone, water and garbage	104.00
Food	250.00
Clothing and household goods (Sears and Mervyns time payments)	61.00

Medicine not covered by Medi-Cal ($80.00) and back medical bill payments ($30)	110.00
Gas, car repair and maintenance, car insurance	125.00
	$722.00**

*We paid our final house payment in September, 1983.
**Compare to our income of $727.00.

6. Currently, Hubert receives Medi-Cal at zero share-of-cost because Merced County has determined our monthly net nonexempt income to be slightly less than the maintenance need level of $709.

7. Until the fall of 1982, we received Medi-Cal at shares-of-cost varying from zero to $40 to $240. Then in about September, 1982, we received a notice that our share-of-cost for Medi-Cal had risen to $359 per month. Our worker explained that Medi-Cal expected us to live on a certain maintenance need level, and that all of the rest of our money, $359, had to go for medical payments before we could get Medi-Cal. At the time, our income was about $705, and we could not possibly have lived on the remaining $346 per month. Our house payment was $150 and our utilities averaged $90. Each month we used the rest of our money to buy food, clothing, and personal and household supplies. We also had considerable transportation expenses, but we used our car only for medical visits and grocery shopping. At the same time, some of Hubert's medicines were no longer covered by Medi-Cal. His cholesterol pills, lorelco, cost about $36 per month; his nitroduro patches, at least $34; and his vasodilan, about $6. Altogether, we usually spent $80 or more each month on medicines and medical supplies that were not covered by Medi-Cal. Mostly, I suffered when the share-of-cost

was high. I did not got to the doctor during the entire year, nor did I buy my prescription medicines, which were not covered. We incurred substantial medical bills to hospitals, doctors and pharmacies during this time. And finally, we were not able to spend the money on food to eat what our special diets required.

8. In about November, 1983, our share-of-cost was reduced back to zero. My legal aid attorneys have informed me that this happened because a new state law and a lawsuit changed the maintenance need level from $544 to $709, so that we had no more share-of-cost. They have also informed me that the federal government may force California to go back to the old maintenance need level and higher shares-of-cost. If we went back to having to live on $544, we would have all of the same problems all over again:

a. we would have to violate our special medical diets;

b. I would have to cut out my medical care entirely;

c. we would be incurring larger and larger medical bills for Hubert's care, and we would not be able to make payments on any of the back bills (although we have been trying to make monthly payments, we still have outstanding medical bills amounting to about $900, as a result of the high share-of-cost before);

d. we would have to cut back on the use of our car, although we now rarely use it for anything other than medical visits and grocery shopping; and

e. we would have to choose between buying food and buying medicines.

I declare under the penalty of perjury that the foregoing is true and correct.

/s/ LORETTA MCPARLAND

Loretta McParland

DECLARATION OF DONALD MINOR

I, Donald Minor, declare:

1. I live with my wife, Imogene, and my 19 year old son, Paul, in Dublin, California. The matters stated herein are within my personal knowledge, and if called as a witness, I could testify competently thereto.

2. I am 58 years old, and suffer from a serious heart condition, diabetes, and hypertension. In addition, I have had surgery for cataracts, and without special glasses, I am virtually blind in both eyes. I have had five heart attacks. The last one was a cardiac arrest, from which I almost died.

3. I am required to see a doctor at least every three months, and more if necessary, to monitor my condition. I take four heart medications every six hours and three other pills once a day. I also use insulin twice a day. The cost of these medications is about $140.00 per month. In addition, I should be eating a special diet both because of my diabetes and my heart condition. Finally, I see an opthamologist every six months to monitor my eye problem.

4. My family's sole source of income is Social Security Disability Insurance, which I have received for about seven (7) years. I receive $727.00 per month for my wife and myself, and my son receives $161.00. Until June 1, 1983, we received Medi-Cal coverage without any cost. One medication which costs about $11.00 was not covered. All my other medical expenses were paid for by Medi-Cal.

5. In September, 1982, I received a notice from the Alameda County Welfare Department informing me that my family's share of cost for Medi-Cal would be $279.00, starting on October 11 that share of cost was based on a maintenance need amount of $589.00. We could not possibly have lived on $589.00 a month. Our rent is $300.00, our utility bill goes from about $100.00 in warm months to as much as $160.00 in cold months, our water

bill is $49.00 every two months, and our garbage bill is $38.00 every three months. The remaining money, every month, is used to pay our telephone bill, and to buy food, clothing, and other necessary items. As it is, by the end of the month we frequently do not have any money for food. Although I am not supposed to eat large amounts of starch, or foods high in cholesterol, by the end of the month we generally can only afford eggs or spaghetti.

7. Since we live in Dublin, where bus service is very inadequate, and my doctor is in San Leandro, we must have a car. We try to use no more than two tanks of gas a month. We cannot afford insurance at all. If the car needs new tires or a repair, we have to go hungry.

8. It is essential that I be able to receive Medi-Cal benefits, since I cannot afford my medical expenses myself. Our new share of cost made it impossible for me to do that. As a result, I requested a fair hearing to contest the share of cost. I was also a plaintiff in a lawsuit, called *Minor* v. *Myers* No. C-82-5974-SW (N.D. Cal.). My attorney, Evelyn R. Frank informs me that the purpose of the lawsuit was to force the Department of Health Services to use the same maintenance need standards for medically needy families as it was using for aged, blind and disabled people. She also informs me that, after the lawsuit was filed, new regulations were issued, which did increase the maintenance need for medically needy families. As a result of those regulations, my family's share of cost was increased to $193.00 per month, instead of $279.00, effective June 1, 1983. (See Exhibit A, hereto).

9. Since June, I have not been able to meet the $193.00 share of cost. As a result of the confusion in my Medi-Cal coverage and the lack of stickers since June, I missed several regular doctor's appointments, because I was not able to pay for them. I did go to the doctor on August 12, which cost $38.00. The last time I bought medicine in early August, I spent $106.00, which was for just part of the

medications I needed. I could not afford the rest. In July, I almost ran out of insulin. Also, my wife had a doctor's appointment because she has a painful lump in her breast. That one appointment cost $75.00. We live from check to check, never knowing when I will be unable to get the insulin which I need in order to avoid a diabetic coma. I am also very worried, since I do not know how I will continue to get the medical attention which I should have to avoid further heart problems.

10. My attorney has informed me that the Legislature passed a new law, which would raise our maintenance need to $708.00 per month, if we took our son out of our Medi-Cal budget unit. Since our share of cost would be 0, we would definitely elect to take our son out of our Medi-Cal case, so that I could go to the doctor and get my medications. I respectfully ask this court to issue an order requiring the Department of Health Services to implement the new law as soon as possible. For me, this may be a matter of life or death.

11. Within one year prior to the date of this declaration, I have paid a tax to the State of California.

I declare under penalty of perjury that the foregoing is true and correct, and was executed in Dublin, California.

DATED: August 26, 1983

/s/ DONALD MINOR
Donald Minor

INTERVENORS' EXHIBIT 13A

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

Docket No. 84-6
Reconsideration Hearing

IN THE MATTER OF:
CALIFORNIA STATE PLAN
AMENDMENT NO. 83-14

DECLARATION OF SALVADORA VASQUEZ

I, Salvadora Vasquez, declare that:

1. I live with my husband, Mike Vasquez, at 1156 San Luis, Apt. 90, Los Banos, California.

2. I am 62 years old and my husband is 63. My husband has been a kidney dialysis patient since about 1976. He is nearly blind, but he just had a cataract operation on June 19, 1984. Mike's right leg below the knee and one of his left toes have been amputated. He also suffers from diabetes.

3. Mike has kidney dialysis three times a week, on Tuesdays, Thursdays and Saturdays, at the Satellite Dialysis Center in Modesto, California, about 60 miles from our home in Los Banos. A van picks him up at 9:00 A.M. on those days and returns him home at about 7:30 P.M. He is in a wheelchair most of the time, but uses a walker around our apartment. Sometimes Mike gets infections where his leg was amputated, and he must get medicine and gauze pads to treat them. I also buy jars of Lanalor cream for his legs, on the recommendation of his

doctor. This cream costs $12.00 per jar. He takes insulin in tablets for his diabetes from time to time. He has also been prescribed folic acid and vitamins.

4. I have diabetes, arthritis, heart trouble and high blood pressure. I must give myself insulin injections twice a day. My arthritis causes me pain from my knees to my hip, and I often must walk with a cane. I have very poor balance. My hands are so painful that I cannot use them very well. Often I cannot pick up a skillet. I have had my gall bladder removed, have had surgery for varicose veins twice, and suffer from recurrent bladder infections. I have a disability application pending.

5. For my diabetes, I inject 30 cc. of Nph Iletin I (100 units/cc.) in the morning and 20 cc. in the evening. I inject 10 cc. of Regular Iletin I (100 units/cc.) in the morning and 5 cc. in the evening. I must have a sufficient number of syringes to do this every month. For my arthritis I take 2 parafon forte tablets four times a day. These cost about $22.00 per month. I also take Tylenol, which costs about $4.00 a month. For my heart trouble, I take .25 mg of lanoxin every morning. To lower my blood pressure, I take dyazide twice daily. When I have other health problems, such as bladder infections, I must take medicine for them also. Despite my own health problems, I have spent much of my time the last few years caring for my husband and, before the van was available, taking him to his dialysis treatments.

6. Both Mike and I are suppose to be on special diets, mostly to control our diabetes. We are supposed to eat vegetables and fruit but very little meat. We are not supposed to eat tortillas, potatoes, macaroni or more than 2 slices or bread. We cannot afford to follow this diet. For instance, we are supposed to eat fish three times a week. We are not able to afford to do this, except sometimes in the first week of a month after our money comes. I sometimes make a tuna casserole for the fish, but it usually has macaroni or other starchy foods in it that we are not sup-

posed to eat. I also fix bologna sandwiches, even though the bread, the meat, and the salt are bad for us. We have cut down on tortillas, but we still eat potatoes.

7. Our source of income is Mike's Social Security disability benefits, which are $580 a month. Until April, 1984, when I turned 62, we had no other income. Now, I get a Social Security check of $219 a month. Our total monthly income is now $799. Currently, our monthy expenses are:

Rent	$147.00
Gas, electricity and telephone	96.00
Food	225.00
Medicines and medical supplies not covered by Medi-Cal	80.00
Laundromat	15.00
Household and personal hygiene supplies	80.00
Gas, car repair, car insurance	137.16
Household goods (McMahan's installment payment)	23.00
	$803.16*

*Compare to income of $799.

Before I began receiving a Social Security check, our income was only $580. However, the apartment we live in is subsidized housing, so our rent was considerably lower then. We did not then have a Medi-Cal share-of-cost, and we were not able to buy as much food or as many personal or household items. We still have not brought clothing, underwear or linens for about 9 years, and the things we have are wearing out.

8. Currently, Mike receives Medi-Cal after a $70 share-of-cost. Before I got a Social Security check, Mike had a zero Medi-Cal share-of-cost because Merced County

determined our monthly net nonexempt income to be considerably less than the maintenance need level of $709 for two adults.

9. My legal aid attorneys have informed me that a state law and a lawsuit established the maintenance need level at $709 instead of $544. They have also informed me that the federal government may force California to go back to the old maintenance need level and higher shares-of-cost. If we had to live on $544, which is even less than the $580 just my husband used to get, our share-of-cost would take $235 each month. Our rent would not go back down to the $90 it was when we only received $580; even though our share-of-cost would be high and we would have less to live on, our rent would stay at the new higher rate. My husband would have to continue his dialysis treatments, so we would have to cut back severely on food, personal supplies, and transportation. I would not visit my doctors in Merced, about 35 miles away, and we would eat foods which are not on our special diets.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on July 7, 1984, at Merced, California.

/s/ SALVADORA S. VASQUEZ

Salvadora Vasquez

INTERVENORS' EXHIBIT 17

DEPARTMENT OF HEALTH AND HUMAN SERVICES HEALTH CARE FINANCING ADMINISTRATION

Docket No. 84-6

IN THE MATTER OF
CALIFORNIA STATE PLAN
AMENDMENT NO. 83-14

DECLARATION OF ASSEMBLYWOMAN MOORHEAD

I, Jean Moorhead, declare:

1. I am the duly elected Assemblywoman from the Fifth Assembly District, which includes portions of Sacramento and Placer Counties. I am the Chair of the Assembly Committee on Aging and Long Term Care. The matters contained in this declaration are within my personal knowledge, and if called as a witness, I could competently testify thereto.

2. In June, 1982, the California Legislature passed a Medi-Cal Reform bill, known as AB 799, 1982 Stats. Ch. 328. That bill repealed Welfare and Institutions Code § 14005.13, which had provided a Special Income Deduction allowing medically needy single adults and couples to keep as much income as SSI recipients to meet their non-medical needs. AB 799 also enacted a new formula for setting the medically needy income level (MNIL) in California. As a result of that formula, which based the MNIL's for the aged and disabled on 133-⅓% of the AFDC grant for one or two persons, single adults were required to meet their non-medical needs on $331 per month, and adult couples were required to live on $544 per month. In con-

trast, SSI recipients received $451 for a single person, and $838 for a couple. Medically needy aged and disabled people experienced a very sharp increase in the share of cost which they were required to meet each month in order to qualify for Medi-Cal.

2. During the early part of 1983, the Assembly Committee on Aging and Long Term Care held public hearings in four cities to take testimony on the effect of the changes in California's Medi-Cal program accomplished by AB 799. The first hearing was held in San Diego on February 4th, the second in Oakland on February 25th, the third in Los Angeles on March 18th, and the fourth in Eureka on April 8th.

3. In each of those hearings there was a great deal of testimony from advocates, medical providers, and from aged and disabled people themselves, regarding the tremendous increases in the share of cost which had occurred as a result of AB 799's repeal of the Special Income Deduction. Many of those affected suffered from serious illnesses such as cancer, heart disease, and crippling arthritis. Some witnesses testified that these people were unable to go to the doctor and unable to obtain needed prescription medications, because they could not afford to pay for those needs themselves and could not meet their new share of cost. Others testified that seniors and disabled people were being forced to do without adequate food, in order to pay for necessary medical treatment. A nutritionist testified that 50% of the diseases prevalent among the elderly are related to malnutrition, and that more than 50% of the elderly have substandard diets. This situation was being exacerbated by the increase in the share of cost. (Eureka Hearing at 78-80). One woman testified that, because of the increased share of cost, she was forced to put her husband into a nursing home, because she could not afford to pay for their non-medical

needs and also to pay the share of cost for his medical care. (Los Angeles Hearing at 41-45).

4. The testimony which the Committee heard demonstrated, without exception, that elderly and disabled adults could not meet their most basic needs on $331 for a single person, or $544 for a couple. I submit with this declaration the transcripts of the hearings, and particularly direct the Hearing Officer's attention to the pages listed in the Appendix hereto.

5. In addition to the testimony taken at the public hearing, my office was flooded by letters and phone calls from people who found themselves unable to qualify for Medi-Cal because of the increase in their share of cost. Also, my office received thousands of signatures on a statewide petition which was circulated by the Gray Panthers and other groups, urging an increase in the MNIL's. I am aware that many other legislators received similar communications from their constituents.

6. As a result of the testimony and the large number of complaints, many legislators, including myself, realized for the first time the impact which the new increase in the share of cost would have on aged and disabled people who depend on Medi-Cal as a means of getting necessary medical treatment.

7. Several bills were introduced to try to deal with the problems caused by the increase in the share of cost. Ultimately, AB 963, authored by Assemblyman Agnos, became the main focus of legislative attention, because it provided a formula which would increase the maintenance need amount for medically needy single aged and disabled people and for couples to a level which, while still inadequate, might allow them at least to obtain sufficient food, decent shelter, and other basic necessities. It did so by basing the MNIL for a single person on the AFDC grant for two, and by basing the MNIL for an adult couple on the AFDC grant for three. The Legislature thereby recognized

that elderly and disabled adults frequently incur greater living expenses than is the case for families with children, because of their need for such things as special diets, and because of their generally more frail condition. I was a principal co-author of the bill in the Assembly. The breadth of support for the bill can be seen from the fact that it also had thirteen other co-sponsors in the Assembly. In the Senate, the principal co-author was a Republican, Senator Seymour, and there were six additional co-authors. The bill's provisions were included in the budget trailer bill, 1983 Stats. Ch. 323, and were thus enacted into law on June 21, 1983.

I declare under penalty of perjury that the foregoing is true and correct and was executed in Sacramento, California.

DATED:

/s/ JEAN M. MOORHEAD
Assemblywoman Jean Moorhead

APPENDIX:

Testimony at State-Wide Hearings From Adult Couples Affected By Increase in Share of Cost

(Page number indicated is first page of witness' testimony)

San Diego Hearing, February 4, 1983

Pages	
3	Paul Chapman
20	Mary Wilson
33	Mrs. Warren Van Branken
60	Linda Boydston
61	Dena Anderson
65	Max Sparer
82	Jane Dumas
102	Deborah Hill
109	Sandra Carty
114	John Barbre
119	Steven L. Jones

Oakland Hearing, February 25, 1983

Pages	
3	Alan Butts
24	Ronald Kwiek (See also p. 122a-q)
38	Loyde Cade
61	Joel Resnikoff
64	Marty Lynch
94	Lilia Rosenheimer
122D	Allan Bierman
122E	Jerry Casson

Los Angeles Hearing, March 18, 1983

Pages	
41	Daisy Bell (see also p. 122B)
77	Lourdes Birba
80	Cynthia Selin
111	Monica Bennett
117	Daryl Dichek
Cl-3	East Los Angeles Health Task Force
Gl	Assemblyman Dave Elder
AA19	Various Dialysis Patients

Eureka Hearing, April 8, 1983

Pages	
61	Billie Rogers
70	Elizabeth Lee
78	Mary Pinchini
94	Bill Landis (see also p. N1-38)
D1	Donald Barrier
E1	Alfred Abernathy

Transcript of Proceedings

BEFORE THE
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

Docket No. 84-6
Reconsideration Hearing

IN THE MATTER OF
CALIFORNIA STATE PLAN
AMENDMENT NO. 83-14

TESTIMONY OF BRUCE CAMPBELL

DATE: July 2, 1984
PLACE: San Francisco, California
PAGES: 1-87

[56] Q [Ms. Frank] Showing you what has been marked and admitted as Intervenor's Exhibit 5, are you familiar with this document?

A Yes.

Q When did you first see it?

A When it came back from our headquarters, Bureau of Eligibility, Reimbursement and Coverage. The date is April 15, 1983, so I would assume, you know, within a matter of couple of days.

Q All right.

And this was the response to the inquiry in the previous exhibit, was it not?

A Ma'am, it's from Bureau of Eligibility, Reimbursement and Coverage.

Q Now, Mr. Oday, I gather, is the Director of that bureau?

A He was.

Q He was at the time?

A Right.

Q And as far as you were concerned was his opinion binding on the Regional Office in matters of policy interpretation?

A I would prefer to say binding on me.

[57] Q Binding on you.

A The reason I say that is because we make—as program people we don't have the authority to approve or disapprove State Plan Amendments. We don't have the authority unless it's been specifically delegated to the Regional Administrator by the Administrator to speak. So, in other words, in our predecisional documents back and forth, until the decision is made by HCFA headquarters back there, you know, and—we send the ideas back and forth.

Q Now, when you say HCFA headquarters do you include in that Mr. Oday?

A Pardon?

Q When you say HCFA headquarters do you include in that Mr. Oday?

A No, when I'm speaking of headquarters, to be honest, ultimately I'm speaking of up through the Administrator.

Q But as far as matters of policy this—as far as you were concerned—was the policy of the agency, is that correct?

A That's what I assumed.

(Pause.)

Q And you communicated that response to the State, did you not?

A Yes, I did.

[58] Q To Carol Goodman, is that correct?

A Yes.

Q Now, I'm going to show you—you have in your hand—

HEARING OFFICER: I'd like to interrupt for a moment.

MS. FRANK: Yes?

HEARING OFFICER: I'd like you to go back to Intervenor's Exhibit 5, the Oday memo. How do you interpret the last sentence of the second paragraph – next-to-last sentence, excuse me – "We are currently in the process of clearing regulations which reflect this interpretation through HCFA and the Office of General Counsel for eventual publication in the Federal Register."

What does that mean to you as a program person?

THE WITNESS: As a program person that would mean to me that HCFA is about to take an action which central office would know about, which I as a regional person would not be aware that it's in the process of doing something.

HEARING OFFICER: Does it indicate to you that the position in here was not a final position and it had to be cleared by the Office of General Counsel?

(Pause.)

THE WITNESS: I'm sorry, could you repeat that?

HEARING OFFICER: Does that sentence indicate [59] to you that this is not a final agency position, but rather a proposed position that has to be cleared by the Office of General Counsel?

THE WITNESS: Yes.

HEARING OFFICER: Was it your understanding that agency policy involving the interpretation of the statute has to be cleared by the Office of General Counsel?

THE WITNESS: Yes, sir.

HEARING OFFICER: Go ahead.

BY MS. FRANK:

Q Now, when you had the discussions with Carol Goodman did you – and you stated that you informed her that it would be HCFA's policy that TEFRA would invalidate the adult couple maintenance need level, did you advise her that that had yet to be cleared by the Office of General Counsel?

A I said I assumed that that's what would be happening. I don't think I specifically advised her of that. In other words, I advised her that this was what I had gotten back.

Q So you advised her that you had been informed that the agency policy was that this would violate TEFRA?

A That's correct.

[85] * * * * *

BY MR. JOHNSON:

Q Bruce, directing you—I believe it is—to Exhibit 8, Intervenor's Exhibit 8, the letter O'Hara wrote on or about August 23 to Doris Soderberg.

(The document was proffered to the witness.)

A Yes?

Q At the time—you prepared this letter also for Mr. O'Hara's signature—

A Yes, I did.

Q —like you had with Exhibit 4, the letter in March?

A I'm sorry, which was Exhibit 4?

Q That was the one in March.

HEARING OFFICER: Was that the O'Hara memo back to Washington?

MR. JOHNSON: Yes, the O'Hara letter that went to Washington.

THE WITNESS: Right.

BY MR. JOHNSON:

Q And you had received a letter back from Oday telling you that that had to—that it may very well violate [86] but we have regulations in the process and it has to go through General Counsel's Office before anything final can be done. Now, when you sent that letter—or, when O'Hara sent this letter—on August 23rd you had never received any final clearance from the Office of General Counsel, had you?

A That's correct.

MR. JOHNSON: That's all I have.

HEARING OFFICER: Ms. Kohn?

MS. KOHN: I just have a couple, and one follow-up question.

REDIRECT EXAMINATION

BY MS. KOHN:

Q Mr. Campbell, was the State—or did you ever tell anyone from the State that if they were to submit a methodology for factoring out the adult couple MNIL from their program that TEFRA would preclude the proposed amendment?

A No.

Q One other question: Who makes the final initial determinations approving or disapproving State Plans?

A The Administrator of HCFA.

* * * * *

In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-863

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

STANLEY CUBANSKI, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF HEALTH SERVICES, ET AL.

ORDER ALLOWING CERTIORARI. *Filed February 23, 1987.*

The petition herein for a writ of certiorari to the *United States Court of Appeals for the Ninth Circuit* is granted.

U.S. GOVERNMENT PRINTING OFFICE: 1987—181-483/40506